

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6863 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JABUBEN W/O. AMRAT RAMA VAGHRI

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner
MR UR BHATT ADD. GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 18/02/98

ORAL JUDGEMENT

The petitioner who is detained under the order of detention dt. 8th September, 1997 passed by the Police Commissioner for the City of Ahmedabad, invoking his powers under Sec.3(2) of the Gujarat Prevention of Anti-Social Activities Act (for short " the Act"), calls in question the legality and validity of the detention order.

2. Necessary facts in order to appreciate the rival contentions may, in brief, be stated. The Police Commissioner came to know that the petitioner was a bootlegger, and by his nefarious activities, he was harassing the public and disturbing the public order. With a view to have his bootlegging activities free from any obstruction and have a smooth sale of liquor in huge quantity, he was terrorising the people and spreading the panic. The Police Commissioner, after going through certain records of the Madhavpura Police Stations, found that about five complaints against the petitioner for the offence punishable under Secs. 66(1)(b), 65(e) and 81 of the Bombay Prohibition Act were lodged with Madavpura Police Station. As alleged in those complaints, the petitioner was found in possession of 20 litres to 55 litres of liquor, without any pass or permit. The Commissioner of Police, therefore, made the detailed inquiry. He found that the petitioner was a head-strong person and by his different criminal activities, he was terrorising the people. He used to extort money or asked the persons to provide him help or to spare their vehicles or to permit him to use their premises and harbour him or his compeers.. Those who were refusing, were beaten and molested. He by diabolism used to cause the people to bend his way. His activities of spreading pandemonium and disturbing the public order were going berserk. No one, therefore, was ready to come forward and state against him. After considerable persuasion and assurances that the facts about them disclosing their identity would be kept secret, some of the persons agreed to state against the petitioner. The Police Commissioner studied the materials before him and could see that to curb petitioner's anti-social activities, subversive and chaotic in nature, actions under ordinary law sounding dull would be unproductive. The only way out to help the people and maintain public order was to detain him under the Act. He, therefore, passed the impugned order, consequently, at present the petitioner is under detention.

3. The learned advocate representing the petitioner has on three to four grounds challenged the order, but when a query was made, he tapered off his submission confining to the only point namely maintenance of the public order. According to him, by the aforesaid five complaints lodged against the petitioner, the public order would never be disturbed and those cases can well be dealt with effectively under the general law. Mr. U.R.Bhatt, the learned APP has supported the order submitting that no illegality has been committed and

every thing has been done quite in consonance with law.
He has at last urged to dismiss the petition.

4. When both have confined to the only point about possibility of maintenance of public order, I will confine to the said ground going to the root of the case. It may be stated that the Supreme Court has in the case of Piyush Kantilal Mehta Versus Commissioner of Police, Ahmedabad City and Another, AIR 1989 SC 491, made it clear that even if the detenu is held to be the bootlegger, within the meaning of Sec.2(b) of the Act, he can not be detained under the Act unless his activities as bootlegger affect adversely, or are likely to be affected adversely to the maintenance of public order. A person may be fierce by nature but his activities so long as do not affect the public generally, the question of public order will not arise. There must be the material to show that there has been a feeling of insecurity amongst the general public, or it must be shown that the acts of the person create panic or fear in the minds of public upsetting the tempo of the life of the community. Few incidents or minor incidents of use of force or violence or illegal sale of liquor cannot be the ground to hold that the person is indulging in anti-social & nefarious or subversive activities. Keeping a knife or the fact that the petitioner is fierce by nature, or a head-strong person, or some times, he picks up a fight, or abuses, or bickers, or that he does not afraid of the Police, will not justify to describe him a dangerous person or that his activities are subversive & nefarious falling within the four corners of anti-social activities. Following that decision, this court has also taken the same view in the case of Amrat Rambhai Vaghari Versus Commissioner of Police Ahmedabad and others, 1995(2) G.L.H. 874.

5. In this case, on the basis of the aforesaid eight cases, it is sought to be canvassed that by his bootlegging activities, the public order was being disturbed, because, at times, the petitioner was harassing the people, caused them to bend his way, and those who resisted, were beaten, but such minor incidents can not be said to have created any feeling of insecurity or panic or terror amongst the public of the area giving rise to the question of maintenance of public order. In view of the aforesaid decision, therefore, the detention order cannot be maintained, the same is required to be quashed.

6. For the aforesaid reason, this petition is allowed. The order of detention dt.8th September, 1997

passed by the Police Commissioner, Ahmedabad City is quashed and set aside, and the petitioner-detenu is hereby ordered to be set at liberty forth with, if no longer required in any other case. Rule made accordingly absolute.

(ccs)